

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEWAZINGA CORPORATION,	:	
Plaintiff,	:	20 Civ. 1106 (LGS)
	:	
-against-	:	<u>ORDER</u>
	:	
GOOGLE LLC,	:	
Defendant.	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, on October 28, 2024, over four years after this case was filed and approximately two weeks before trial, Plaintiff Kewazinga Corporation filed a letter seeking to present a damages theory describing Ms. Riley’s “Damages Floor” as an “undercount” because it is based on an undercount of users who accessed Street View after performing a search. (Dkt. 589). Defendant Google LLC filed a letter in opposition. (Dkt. 600).

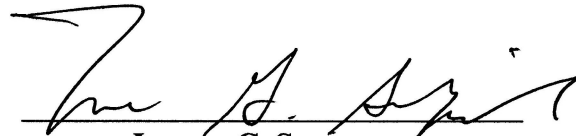
WHEREAS, under Federal Circuit law, a plaintiff must prove the existence of damages. *See, e.g., TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1291 (Fed. Cir. 2020) (“there can be an award of no damages where ‘none were proven.’”); *Gustafson, Inc. v. Intersystems Indus. Prods., Inc.*, 897 F.2d 508, 509–10 (Fed. Cir. 1990) (same). A reasonable royalty analysis “necessarily involves an element of approximation and uncertainty,” *Whitserve, LLC v. Computer Packages, Inc.*, 694 F.3d 10, 26 (Fed. Cir. 2012), but a damages award may not be based on “speculative and unreliable evidence.” *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 868 (Fed. Cir. 2010); *accord Exmark Mfg. Co. Inc. v. Briggs & Stratton Power Prod. Grp., LLC*, 879 F.3d 1332, 1350 (Fed. Cir. 2018).

WHEREAS, Plaintiff argues that it should be able to present evidence that the damages opinion presented by Ms. Riley understates the amount of a reasonable royalty because her opinion relies on only a portion of the user traffic from search results to Street View. Plaintiff purports to base this theory

on a document that Ms. Riley had rejected as a basis for her opinion and on deposition testimony by Defendant's software engineer. Plaintiff offers no explanation and has never previously disclosed how the jury could calculate a more accurate royalty rate based on this theory and evidence than Ms. Riley herself was able to calculate. It is hereby

ORDERED that Plaintiff may not present its "or more" damages theory because it is untimely and speculative as explained in Google's opposition. PX-325 and PX-326 are excluded under Federal Rules of Evidence 401 and 402 as irrelevant to the matters to be tried.

Dated: November 1, 2024
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE